

# CONSERVATORSHIP

## IN MICHIGAN

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### Is a conservatorship necessary?

- Can the individual manage their financial affairs?
  - Does the individual have a valid Durable Power of Attorney?
  - Does the individual have a trust?
  - Are the individual's assets in a joint bank account?
- Is the individual a minor receiving more than \$5,000 annually?

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### Petition for conservatorship:

- Courts cannot provide legal information. If you have legal questions, seek the advice of an attorney.
- The forms are available on-line at <http://courts.Michigan.gov/scao/courtforms/probate/gpindex.htm>
- The petition must be filed in the county probate court where the individual that needs the conservatorship lives.

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### **Filling out court forms and filing the petition:**

- Sign all forms.
- Make sure all interested persons are listed along with their addresses.
- If possible, obtain a waiver and consent form from each interested person (PC 561).
- Include the filing fee with the petition: \$150.00.

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### **Interested persons:**

- The subject of the petition if at least 14.
- The presumptive heirs of the subject of the petition.
- If there are no presumptive heirs, the Attorney General.
- Any attorney-in-fact under a durable power of attorney.
- The nominated conservator.
- Any government agency paying benefits.

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### **Service on interested persons:**

- All interested persons are to be served with a copy of the petition and a notice of hearing.
- If the subject of the petition is at least 14, they must also be served.
- Service can be made by
  - Personal service (7 days before hearing).
  - By mail (14 days before hearing).
  - By publication (14 days before hearing).

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### Service on interested persons:

- The proof of service must be filed with the court prior to the hearing.

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### Guardian ad litem:

- Unless the subject of the petition is represented by an attorney, the court will appoint a guardian ad litem.
- The guardian ad litem will visit the subject of the petition and make a recommendation to the court whether the conservatorship is necessary.
- A guardian ad litem represents the best interests of the subject of the petition – but does not represent the individual as an attorney.

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### Acceptance of appointment:

PC 571, Acceptance of Appointment, must be filed with the court once a conservator is appointed.

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### **Bond of fiduciary:**

- The court may require a surety bond.
- The bond may be ordered upon appointment, when selling real estate, or at anytime during the conservatorship.

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### **Letters of Conservatorship:**

- Legal document showing authority as conservator.
- May contain limitations.
- Certified copies may be purchased from the court: \$10.00 first page and \$1.00 additional pages (per copy).

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### **Duties and Responsibilities of the Conservator**

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### Duties and responsibilities:

- A conservator handles the financial affairs for the protected individual.
- MCL 700.5423 lists the general powers.
- A conservator must preserve the assets of the protected individual – may only be used for the support, education, care and benefit of the protected individual and his or her dependents (with prior court approval).

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### Duties and responsibilities:

- The conservator must file an inventory within 56 days of appointment.
- The conservator must file an account within 56 days of the end of an accounting period, usually annually.

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### Michigan's Prudent Investor Rule:

- The conservator must observe the standard of care of a prudent man dealing with the property of another.
- All decisions must be consistent with the best interests of the protected individual.
- A conservator must set up a separate checking account for the conservatorship.

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### Spending the protected individual's money:

- Look at the total available assets, the probable length of the conservatorship, and the likelihood the protected individual will become self-sufficient in the future.
- Look at the accustomed standard of living of the protected individual and his or her dependents.
- Look at other money or resources available for the protected individual's support.

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### Spending assets:

- Expenses or services for the protected individual's benefit.
  - If a minor, a parent cannot use conservatorship assets to pay for parental obligations of support.
- Charitable donations or gifts not to exceed 20% of annual income. (Not for a minor)

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### Spending assets:

- If approved by the court, the protected individual may be allowed to handle small amounts of money.
- Expenses to administer the conservatorship:
  - Bond fees
  - Attorney fees, GAL fees, fiduciary fees
  - Preparation of income tax returns
  - Filing fees

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### **Record keeping:**

- Keep a record of all income and expenses of the conservatorship.
  - Receipts, bank statements, and cancelled checks.
- Balance all bank statements monthly.
- Avoid paying for anything with cash if possible.

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### **Record keeping:**

- Interested persons or the court may request to review the records of the conservator.
- Computer programs are available to assist with keeping good records.
- Good records make it easier to complete the annual account.

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### **Investments:**

- If there are sufficient assets to pay existing debts and to provide for the protected individual's current needs, the conservator may invest or reinvest the excess assets or income.
- A conservator may hire an investment counselor, but the ultimate responsibility remains with the conservator.
- The Prudent Investor Rule should be followed.

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### **Priority of claims:**

- Court costs and other expenses of administering the conservatorship.
- Claims of the federal or state government.
- Debts incurred for the care, maintenance, or education (already provided) of the protected individual or dependents.
- Debts incurred prior to the conservatorship.
- Any other claim.

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### **Settlements:**

- A conservator shall not enter into a settlement in any court on behalf of a protected individual if the conservator will share in the settlement unless the court has appointed a guardian ad litem to represent the protected individual's interest and consents to the settlement or the court approves the settlement over any objection.

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### **Duty to notify the court:**

- Change of address for the protected individual – within 14 days.
- Change of address for the conservator – within 7 days.
- Protected individual dies – within 14 days.

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### **Possible court action for noncompliance:**

- Notice of Deficiency
  - Sent to conservator, attorney, and surety.
  - Court may schedule a conference.
  - Court may allow 28 days to correct the deficiency.
- Court may grant a 28 day extension for good cause.

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### **Noncompliance:**

- Court may suspend the conservator and appoint a special fiduciary.
- Court may surcharge a conservator.
- Court may administratively close the conservatorship.

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### **Minor's Assets**

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### **Minor's assets:**

- A minor's assets cannot be used by a parent conservator for the support of the minor.
- Most probate courts require that minor funds be placed in a restricted account with access only by court order.

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### **Taking Possession of Assets**

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### **Taking possession of assets:**

- Locate all bank accounts and brokerage accounts and place in the name of the conservatorship.
- Locate any safe deposit box.
- Locate real estate.
- Locate vehicles.

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### **Taking possession of assets:**

- Locate life insurance policies.
- Locate prepaid funeral arrangements.
- Locate personal property.
- The conservator should search the house for hidden cash and other valuable items or documents.

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### **Taking possession of assets:**

- The conservator must determine what to do with each asset, taking into consideration the total assets available, the probable length of the conservatorship, and the likelihood that the protected individual may be able to be self-sufficient in the future.

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### **Sale of real property:**

- A conservator must petition the court to sell the protected individual's real property.
- All interested persons must be served with a copy of the petition and notice of hearing.
- A hearing will be held to determine whether the property may be sold.

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## **Applying for Government Benefits**

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### **Applying for government benefits:**

- A conservator should determine whether the protected individual receives or is entitled to receive government benefits.
- Social Security
- Medicare and Medicaid
- U.S. Department of Veteran Affairs

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## **Conflicts of Interest**

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### Conflicts of interest:

- A conservator must avoid any activity that has the appearance of being a conflict of interest unless prior court approval is obtained.

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### Avoid conflicts of interest:

Do not

- Deposit conservatorship funds into the conservator's personal account.
- Loan or borrow conservatorship funds.
- Sell anything to or buy anything from the protected individual.

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### Avoid conflicts of interest:

Do not

- Charge or pay the protected individual rent for room and board.
- Invest the protected individual's money in any enterprise where the conservator or a family member has an interest.

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## Inventory

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### Inventory:

- Due within 56 days of appointment.
- Includes all assets owned by the protected individual.
- If the asset is jointly owned, list the percentage owned by the protected individual.
- Value is determined as of the date of appointment as conservator.
- Must be served on all interested persons.

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### Debts and encumbrances:

- Unsecured debts are not reported on the inventory.
- Encumbrances are liens on an assets, and they are reported on the inventory.
- A debt is an encumbrance if the asset could not be sold without first paying off the debt.

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### **Assets:**

- Real property – land or buildings attached to the land.
  - A mobile home is not real property unless it is permanently affixed to the land and included in the property tax statement.
- Personal property – all other property.

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### **Assets:**

- Motor vehicles.
- Bank accounts.
- Investment accounts.
- Retirement accounts
- Stocks, bonds, and other investments.
- Life insurance and annuities
- Personal belongings
- Collectables
- Jointly owned assets

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### **Account**

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### **Account:**

- Due within 56 days after the end of an accounting period.
- Accounting period cannot exceed 12 months.
- Conservator may change accounting period with notice to the court – not to exceed 12 months.

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### **Account:**

- Interim account due when ordered by the court.
- Final account due within 56 days after conservatorship ends.
- If conservator is removed, the final account is due within 56 days of the removal or by the date ordered by the court.

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### **Account:**

- The conservator may petition the court to “allow” or approve the account.
- All accounts must be served on interested persons.
- A proof of service must be filed with the court by the date the account is due or by the date of a hearing to allow the account.
  - Interested persons are responsible for reviewing the account and bringing errors to the attention of the court.
  - Interested persons are entitled to review the records of the conservator upon request.

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### **Conservator or attorney fees:**

- An itemized statement of services and fees charged must be attached to the account.
- This must be attached even if the fees have already been paid.

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### **Modification or Termination of Conservatorship**

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### **Modification or termination of conservatorship:**

- The protected individual, the conservator, or any interested person may ask the court to modify or terminate the conservatorship.
- A minor conservatorship terminates when the minor turns 18.
- A conservatorship of an adult terminates when the protected individual dies or by order of the court.

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## Where to go for Help

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### Where to go for help:

- Contact an attorney.
  - Local bar associations
  - Supreme Court website links to lawyer referral services.
  - Probate court may have list of attorneys who accept court appointments to handle conservatorship cases.
- Supreme Court pamphlet “What You Need to Know Before Filing a Petition to Appoint a Conservator,” PC 667.

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### Where to go for help:

- Contact the probate court to find out if they offer training for conservators.
- Several courts have websites that provide useful information.

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